

OPEN MEETING AGENDA ITEM



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Suzanne Nee  
2051 E. Aspen Drive  
Tempe, AZ 85282  
Telephone: (602) 451-0693

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ORIGINAL


BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION  
OF PAYSON WATER CO., INC., AN  
ARIZONA CORPORATION, FOR A  
DETERMINATION OF THE FAIR VALUE  
OF ITS UTILITY PLANTS AND  
PROPERTY AND FOR INCREASES IN ITS  
WATER RATES AND CHARGES FOR  
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-03514A-13-0111

Arizona Corporation Commission  
DOCKETED

JUN 05 2014

DOCKETED BY 

IN THE MATTER OF THE APPLICATION  
OF PAYSON WATER CO., INC., AN  
ARIZONA CORPORATION, FOR  
AUTHORITY TO: (1) ISSUE EVIDENCE  
OF INDEBTEDNESS IN AN AMOUNT  
NOT TO EXCEED \$1,238,000 IN  
CONNECTION WITH INFRASTRUCTURE  
IMPROVEMENTS TO THE UTILITY  
SYSTEM; AND (2) ENCUMBER REAL  
PROPERTY AND PLANT AS SECURITY  
FOR SUCH INDEBTEDNESS.

DOCKET NO: W-03514A-13-0142

INTERVENOR EXCEPTIONS TO ALJ  
Nodes ROO - 06/05/14

Intervenor Suzanne Nee, "SN," exceptions to Administrative Law Judge Dwight D. Nodes' Recommended Opinion and Order on 05/27/14. SN files the following response.

**Entitled to notice and intervention in the Phase 1 Hearings.**  
**ALJ's Position**

"A threshold requirement to a substantive or procedural due process claim is a claimant's 'showing of a liberty or property interest protected by the Constitution.'"<sup>1</sup> In order to be entitled to intervention during the Phase 1 Hearings (and therefore notice), the intervenor must have a protected interest. *Id.* The only people allowed to intervene are those "who are directly *and* substantially affected by the proceedings." *Id.* (emphasis added).

<sup>1</sup> Judge Nodes ROO at pg. 37

1 ALJ Nodes is persuaded that the only people who are directly and substantially affected by the Phase 1  
2 Hearings were customers of the MDC system. *Id.*, at 38. That is because the Phase 1 Proceedings were  
3 regarding only obtaining a loan in order to connect MDC's water system to the Town of Payson's water  
4 system. *Id.*, at 2-4. Since SN is not a customer of the MDC system. *Id.*, at 36, 38. Therefore, the Phase 1  
5 Hearings did not directly affect SN. *Id.*, at 38. Therefore, SN was not entitled to intervention or notice.

6  
7 SN should have been allowed to intervene. The Phase 1 loan was ultimately used as justification for  
8 increasing SN's rates in the Phase 2 Hearings; and based on that logic, may continue to be used to  
9 further increase her rates in future hearings. By bifurcating the proceedings in such a way, PWC denied  
10 SN the opportunity to oppose a scheme that raised her rates.

11  
12 The Due Process Clause states that a State cannot "deprive any person of life, liberty, or property,  
13 without due process of law." U.S. Const. amend. XIV, § 1. A rate increase is a deprivation of property.  
14 Due process of law requires that such deprivation be preceded by notice and an opportunity for hearing  
15 appropriate to the nature of the case. *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, 430-31, ¶¶ 14-15,  
16 153 P.3d 1055, 1059-60 (App.2007) (citation and internal quotation omitted). Such bifurcation denied  
17 SN the opportunity to oppose the loan in Phase 1, and ultimately prevented her from successfully  
18 challenging the rate hike in Phase 2. Accordingly, SN did not have the opportunity to oppose the rate  
19 hike and her due process rights were violated.

20  
21 SN acknowledges the A.A.C. requires such intervenors to be "directly and substantially" affected.  
22 However, the AAC cannot deprive an individual of their constitutional rights. Further, the ACC does not  
23 define what the terms "directly and substantially" mean. Furthermore, the Arizona courts have not  
24 attempted to define this term. However, in *Miller v. Arizona Corp. Com'n*, ratepayers were able to  
25 intervene in court proceedings. 251 P.3d, 400, 403. Had these proceedings not been bifurcated, and  
26 the commission's decision to allow PWC to take the loan was coupled with the decision to raise rates, no  
27 one would argue that SN was not directly and substantially affected. Nevertheless, SN remains directly  
28 and substantially affected by the Phase 1 hearings, even with the bifurcation. By allowing PWC to take a  
29 loan in Phase 1, there now exists an exceedingly high rate increase proposal today. Therefore, Phase 1  
30 hearings directly and substantially affected SN. Accordingly, she was entitled to notice and intervention  
31 of said hearings.

32  
33 **Received Ineffective Notice because the Phase 1 Hearing was Improperly Bifurcated from the Phase 2**  
34 **Hearing; and Improperly Expedited**

35 **ALJ's Position**

36  
37 Although 10 days notice is normally required, the Commission can schedule expedited notice. *Id.*, at 37.  
38 The Commission scheduled expedited notice because "the WIFA deadline for financing approval by the  
39 Commission necessitated the scheduling of an expedited hearing in Phase 1 in order for the first phase  
40 of the pipeline project to be completed by the summer of 2014 - to enable PWC to deliver water directly  
41 from the Town and avoid the expensive water hauling charges that have been assessed to Mesa del  
42 Caballo customers in prior years." *Id.*, at 3-4 (footnote).

1 "The urgency of the circumstances" should not have factored into ALJ Nodes' decision to bifurcate the  
2 Hearing into two Phases and expedite Phase 1. The scope of the Phase 1 Hearing is not at issue here;  
3 only the necessity of bifurcating and expediting.

4  
5 A.A.C. R14-3-109 does not define the circumstances under which an expedited hearing is appropriate.  
6 However, ALJ Nodes determined that the expedited hearing was "reasonable and lawfully issued... given  
7 the urgency of the circumstances." *Id.*, at 37. Judge Nodes does not explain how he decided on this  
8 standard.

9  
10 The Phase 1 financing is necessary only because of PWC's own mismanagement. [See SN Exceptions 3  
11 and 4 this document]. PWC should not be given a break in an administrative proceeding when their own  
12 misconduct created the "need."

13  
14 Furthermore, the bifurcation and expedition were not reasonable. They put SN at an unfair  
15 disadvantage. The expedited and deceptive method of the mailed notice caused SN to miss the Phase 1  
16 hearing entirely. The bifurcation of the Hearing into two phases prevented SN from participating in the  
17 Phase 1 Hearings as an Intervenor. Additionally, "[p]arties must be afforded *reasonable* notice to  
18 provide an opportunity to prepare for a hearing." *Hendricks v. Arizona Dept. of Economic Sec.*, 270 P.3d  
19 874, 876 (See A.R.S., § 41-1063(C) (2004) emphasis added). Clearly, SN did not have enough notice to  
20 prepare adequately for the hearing. Therefore, SN's notice was ineffective.

21  
22 **SN was denied her due process rights because of inadequate Administrative Proceedings.**

23 **ALJ's Position**

24 "Once a protected interest is shown, the issue becomes whether the deprivation of that interest  
25 resulted from an abuse of governmental power that 'shocks the conscience.'" *Id.*, at 37 (citing *Aegis of*  
26 *Arizona, LLC v. Town of Marana*, 206 Ariz. 557, 568, 81 P.3d 1016, 1027 (App. 2003)). The ALJ Nodes  
27 was not persuaded that the treatment of SN would "shock the conscience." *Id.*, at 37. He bases his  
28 opinion on the following:

- 29 1. SN received notice in advance of the Phase 1 proceeding  
30 2. Several of her fellow intervenors participated in the Phase 1 proceeding by providing  
31 public comment.

32  
33 The "shock the conscience" test is inappropriate in this case, for two reasons. The ALJ cites *Aegis of*  
34 *Arizona* for the proposition that the "shock the conscience" test should be used. However, the "shock  
35 the conscience" test applies only to substantive due process claims. *Suboh v. Borgioli*, 298 F.Supp.2d  
36 192, 197-8 (2004) (footnote 3). However, SN is not claiming that the rules themselves are not fair, but  
37 rather, that PWC and the ALJ Nodes did not follow the appropriate rules. This is a case of *procedural*  
38 due process. Therefore, the "shock the conscience" test does not apply.

39  
40 Even if the "shock the conscience" test is appropriate, the conduct in this case should pass the test.  
41 Even if SN could have identified the public notice as such, she was not provided with *enough* notice to  
42 prepare an appropriate statement for the Phase 1 hearings. This should shock the conscience because  
43 she was effectively unable to be heard on a matter where she had a protected interest. Furthermore,

1 SN did not participate in the Phase 1 Proceedings; and her fellow intervenors were only able to  
2 participate in order to provide public comment, which has significantly less procedural substance than  
3 an actual Intervenor. *Id.*, at 36-7. Finally, the ALJ has used the bifurcation scheme as justification to  
4 prevent SN from re-raising the Phase 1 hearings. The ALJ's current conduct would "shock the  
5 conscious."  
6  
7

8 **Repeating the Phase 1 Hearings may change the outcome.**

9 **ALJ's Position**

10  
11 The Intervenor presented, at the Phase 2 hearings, most of what they had planned to present at the  
12 Phase 1 hearings. The ALJ did not believe that the evidence presented by the Intervenor at the Phase 2  
13 hearings would warrant a modification of the Phase 1 decision. *Id.*, at 38. The ALJ claims that the  
14 Intervenor's arguments were beyond the scope of the Phase 1 hearings." *Id.* "The Commission's review  
15 was narrowly limited to considering the reasonableness of the financing request in the context of  
16 whether it: was for a lawful purpose; was within the Company's corporate powers; and was able to be  
17 repaid under reasonable terms and conditions. Although the Intervenor's argue that PWC's water usage  
18 and hauling charges were inaccurate and that there are less expensive options than the TOP-MDC  
19 interconnect, these arguments are not relevant to the limited scope of the Phase 1 decision." *Id.*  
20 Therefore, even if there was a rehearing on the Phase 1 Hearings, and SN was able to intervene, her  
21 evidence would be deemed irrelevant.  
22

23 The Hearings should not have been bifurcated in the first place. Under un-bifurcated proceedings with  
24 timely notice, SN would have been heard at that time and be able to bring her full arguments and  
25 evidence to the record. [MDC 2012 Water Use data and Exception 3: neglect of the system]. The proper  
26 remedy for this violation would be to reverse the decision and redo the proceedings consistent with the  
27 Due Process Clause. *Hendricks v. Arizona Dept. of Economic Sec.*, 270 P.3d 874, at 879.  
28

29 Exception 1a:

30 **Position of the Parties: Staff**

31 "Staff disputes the Intervenor's claim that their due process rights were violated in connection with  
32 Phase 1 proceeding. To the contrary, Staff maintains that Mr. Bremer, Ms. Nee, and Mrs. Reidhead  
33 demonstrated their ability to participate by appearing at the Phase 1 proceeding to provide public  
34 comment. Staff notes that at no time did these individuals request intervention."<sup>2,3</sup>  
35

36 The above statements by Staff are falsifying facts in evidence. ACC's legal team of Robin Mitchell and  
37 Brian Smith initially falsified by testimony in their Reply Brief.<sup>4</sup> As I stated in my Surrebuttal Testimony,

<sup>2</sup> Judge Nodes' ROO, pg. 26, lines 3-6.

<sup>3</sup> Judge Nodes' ROO, pg. 36, lines 12-14.

<sup>4</sup> Arizona Corporation Commission's legal team's March 21, 2014 Reply Brief, document #151940,

1 "SN would like to have attended the Phase (1) Public Hearing at 10:00 am at the Arizona Corporation  
2 Commission and give public comment. However, SN was not able to do this due to the method of  
3 mailing this information."<sup>5</sup>

4 I feel the envelope sent by the company was deceptive in the it didn't have either the Company's name  
5 nor the Company's Denver or Payson return address.

6 Exception 1b:

7 ROO, Positions of the Parties, Ms Nee: Exception on pg. 29, lines 17-20.

8 "Although she acknowledges receiving notice of the Phase 1 hearing held on September 20 [25], 2014,  
9 Ms. Nee argues that she did not have enough time to intervene in and prepare for the hearing on  
10 September 25, 2014."<sup>6</sup>

11 My first notification of the Phase 1 hearing occurring on Sept. 25<sup>th</sup> was via the email (pg. 7) below from a  
12 Mead Ranch neighbor. I received this email on September 26<sup>th</sup>, 2014. Because of the PWC's deceptive  
13 method of mailing the Public Notice in a nondescript, junk mail-looking envelope, I was not even aware  
14 of the Phase 1 hearing until the day AFTER the hearing. PWC's deceptive method of mailing prevented  
15 me from being able to appear at the Phase 1 hearing.

16 Exception 1c:

17 Issues raised by Intervenors

18 Due Process and Notice for Phase 1 Financing Approval<sup>7</sup>

19 "Although they acknowledge receiving notice of the Phase 1 hearing on September 20, 2014, Ms.  
20 Reidhead and Ms. Nee argue that they did not have enough time to intervene or prepare for the hearing  
21 held on September 25, 2014[2013]."

22 I stated that I received my notice of the Phase 1 hearing on or after September 20, 2013.<sup>8</sup>

23 Exception 1d:

24 Discussion and Resolution<sup>9</sup>

25 "Rather, Ms. Reidhead, Ms. Nee, and Mr. Bremer all acknowledge receiving notice of the Phase 1  
26 hearing in advance of the hearing."

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pg. 4, lines 1-5 state,

<sup>5</sup> Dec. 18<sup>th</sup>, Suzanne Nee Surrebuttal Testimony, document #151202, pg.1, lines 39-41

<sup>6</sup> Judge Nodes' ROO, pg. 29, lines 18-20.

<sup>7</sup> Judge Nodes' ROO, pg. 35, lines 8 – 10.

<sup>8</sup> SN Intervenor Post-Hearing Brief, Document # 151680, 3/10/14, pg. 2, line 11.

<sup>9</sup> Jude Nodes' ROO, pg. 36, line 25, pg. 37, line 1

1 Again, this is false, I never acknowledge receiving notice of the Phase 1 hearing in advance of the  
2 hearing. I know that I had it on September 26, 2013.

3 Exception 1e:

4 Discussion and Resolution

5 "Although Ms. Nee claims that she initially thought the notice was "junk mail," she nonetheless  
6 acknowledges opening the letter and reading the notice.<sup>10</sup>

7 I acknowledge opening and reading the notice sent in the deceptive looking envelope the day AFTER the  
8 hearing. Therefore, my Due Process Rights to participate in Phase 1 were violated by the Company's  
9 deception in their mailing.

10

11

12

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<sup>10</sup> Judge Nodes' ROO, pg. 38, line 4-5.

**From: "Scherry Duncan" <scherryd@scherry.net>**  
**Subject: Mead Ranch: Payson Water Company**  
**Proposed 125% Rate Increase!**  
**Date: September 26, 2013 1:19:10 PM MST**  
**To: "Scherry Duncan" <scherryd@scherry.net>**

Ranchers,

You should have received a notice this week regarding Payson Water Company's proposed 125% rate increase from it's 2012 revenues.

According to the paperwork received, the proposed monthly **MINIMUM** charge for Mead Ranch would increase from \$16 to \$39.24, more than double the current rate.

In addition, PWC is requesting a three-tiered commodity charge. With the PWC's proposal, which states the average monthly usage is 2,866 gallons, the bill would increase \$25.58, from \$21.21 to \$47.69 per month—more than double, 119% increase. (Please read your copy of the Public Notice for tier breakdown.)

Unfortunately, the Phase 1 hearing at the Arizona Corporation Commission was yesterday. However, Phase 2 hearing is scheduled for January 13, 2014. If you wish to appear in person, public comments will be taken at the beginning of the next hearing. Or you can mail or email a letter voicing your approval or disapproval of the proposed rate increase. For an online comment form that can be submitted online, go here:

<http://www.azcc.gov/Divisions/Utilities/forms/CommentForm.htm>

Make sure you fill in ALL sections:

Name of Doclet you Wish to Comment on:  
*Payson Water Co. Application for Rate Increase*

Doclet No.:  
*W-035144-13-0111*

Utility Name:  
*Payson Water Company*

Make sure you fill in Your Position on the Doclet (Pro or Con), then enter your comments. The button to Submit is at the bottom of the form. If you have any questions about filling out the form, contact the Consumer Services Section at 800.22.7000 and tell them you have questions about Payson Water Company's rate proposal.

If anyone has any viable suggestions that will help prevent this increase, please let me know.

I highly encourage everyone to send their comments as soon as possible.

Scherry

**Positions of the Parties: Staff**

"According to Staff, the surcharge will allow the Company to service that debt obligation independent of any rates that are set as a result of the Phase 2 proceeding. Additionally, Staff notes that the surcharge is only being assessed to the MDC system customers."<sup>11</sup>

Exception 2: We intervenors and the public have been lead to believe that only the residents of MDC will pay for the Cragin tie-in line. It is true that only MDC customers will pay for the WIFA loan surcharge of \$6.75 per month until the next rate increase. This could happen now in Phase 2. If the proposed rate increase is approved ALL customers of Payson Water Company will pay all the remaining costs associated with this MDC Cragin pipeline. PWC claims that the other communities' costs would actually go up with separate costs of service calculated for each community. This claim is "as outrageous as it is false." Taking \$275,000 out of the asset base for the other communities along with all the costs associated with this pipeline would have the effect of lowering our rates. The 9% required rate of return on this \$275,000 has been added into the single rate structure for all PWC customers. Thirdly, this rate case has been estimated to cost \$195,000. This \$65,000 expense per year has been added into expenses of all customers because of the MDC Cragin line. Because PWC has only one cost structure for all customers of PWC, we will all have increased rates due to the Phase 1 decision. Therefore, all customers will lose property and our due process rights were violated in Phase 1 due to the unnecessary bifurcation and expediting of these two phases.

**Q: WHEN WOULD THE DEBT RECOVERY SURCHARGE CEASE?**

A: In the next rate case, I anticipate the recovery of the capital costs and depreciation would be included in base rates and the Debt Recovery Surcharge could be discontinued.<sup>12</sup>

Phase 1 Decision indicates the MDC WIFA loan surcharge was only interim:

24. Because the Phase 1 finance request includes a recommendation for a loan surcharge, we must also consider whether the request satisfies the requirements for approval of interim rates.<sup>13</sup>

13. In addition to the Debt Recovery Surcharge, the Company is proposing an O&M Cost Recovery Surcharge that will allow it to recover sufficient funds to cash flow the additional O&M costs for the C.C. Cragin Pipeline that are not included in operating expenses.<sup>14</sup>

Thus, it is clear, if this rate increase is approved, the MDC WIFA loan surcharge, which is only interim, goes away. ALL Payson Water Company customers will pay for the expenses of the Cragin Pipeline through this rate increase. Bifurcating these cases was a sneaky way for the Company, with Staff's assistance, to take away our Due Process Rights without letting us participate in the Phase 1 proceeding.

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<sup>11</sup> Judge Nodes's ROO, pg. 26, lines 16-19.

<sup>12</sup> Rate Application, Document # 145511, Direct Testimony Mr. Bourassa, pg. 18, lines 3-6.

<sup>13</sup> Decision No. 74175, document # 148385, pg. 13, lines 25-28 and pg. 14, lines 1-10.

<sup>14</sup> Application, Document 145511, pg. 4, lines 16-19.



1 Position of Parties: Staff

2 "In addition, Staff contends that notice was not required for the Phase 1 proceeding because the  
3 Commission was granting emergency interim rate relief, which does not require notice or an  
4 opportunity to be heard."<sup>15</sup>

5 Discussion and Resolution

6 "Given the urgency of the circumstances, we find that notice of the Phase 1 proceeding was reasonable  
7 and lawfully issued in accordance with A.A.C. R14-3-109."<sup>16</sup>

8 Exception 3: Mr. Hardcastle's 10 years of negligence caused the "emergency or urgency" at MDC.  
9 When illusionists want you to miss something right in your view, they get you to look and concentrate  
10 on something else. Mr. Shapiro asked every Intervenor/witness if he/she was a Hydrogeologist. Doing  
11 this jumped our attention to solving a problem that would not have existed if previous management of  
12 PWC had made the proper maintenance and repairs on the MDC water system. What is at the heart of  
13 the problem is an electro-mechanical system ("EMS") with the electrical pump, the well and the  
14 transmission lines. What he should have been asking is, "Are you an Electrical or Mechanical Engineer?"  
15 An Engineer could tell you that an EMS needs periodic repair and maintenance. This situation is similar  
16 to your car. What would happen to your car if you did not change your oil and filter for seven to ten  
17 years? The oil gets dirty, then metal starts rubbing against metal, your engine gets hot, and eventually  
18 your car will not run. I would not characterize this an "emergency" breakdown of your car. I would call  
19 this negligence for not properly maintaining your car.

20  
21 The following are the ratios of Misc. Expenses to Repairs and Maintenance for PWC from 2001 to 2007,  
22 respectively<sup>17</sup>.

|                             |                       |                      |
|-----------------------------|-----------------------|----------------------|
| 23 2001: \$36,067/\$0,      | 2002: \$31,532/\$144, | 2003: \$39,178/\$98, |
| 24 2004: \$41,751/\$16,552, | 2005: \$83,394/\$0,   | \$61,243/\$0,        |
| 25 2007: \$102,451/\$0      |                       |                      |

26 PWC did not repair the MDC pumps or wells, nor put in the proper storage required at MDC even when  
27 PWC was operating profitably from 2001-2007.<sup>18</sup> While it spent little to nothing on Repairs &  
28 Maintenance for seven years, it did steadily raise its Miscellaneous or Overhead Expenses ~~284~~284% in this  
29 timeframe! Regular maintenance and adequate storage is what should have been provided at MDC to  
30 ensure an adequate water supply. If there ever was an actual shortage of water at MDC, it was caused  
31 by management neglect (or hauling water out); it was not caused by some act of god emergency like a

<sup>15</sup> Judge Nodes ROO, pg. 26, lines 10-12.

<sup>16</sup> Judge Nodes ROO, pg. 37, lines 24-25.

<sup>17</sup> SN-Exhibit 5, Supplement to prefiled Testimony, Document #150103, filed Jan. 31, 2014, Exhibit A, pg. 8.

<sup>18</sup> SN Intervenor Response To Supplemental Rejoinder Testimony- Phase 2, Document 150946, Exhibit E, pg 21.

1 tree falling and crushing a pump. Mr. Hardcastle, as part of his business model, **premeditated** this  
2 situation at MDC. He did nothing to improve the water systems under his control that was not legally  
3 required of him. He was not concerned about providing his customers with a safe, reliable water supply.  
4 In fact, he wants his customers to get upset and buy back their deteriorated water system. This worked  
5 for him at Pine/Strawberry for \$3,500,000 payment in 2009. It worked again for him for \$775,000  
6 condemnation sale of Star/Quail Valley in 2012.<sup>19</sup> Thus, he has history and a pattern of **not maintaining**  
7 **and repairing the water systems** that he owns. See comments published in the Payson Roundup by the  
8 community of Pine about Mr. Hardcastle. They are identical to the present situation. The situation at  
9 MDC was clearly NOT an emergency; it was neglect. Therefore, customers should have been given the  
10 proper 10 days notice to attend the Phase 1 hearing. Our Due Process Rights have been violated.

11  
12 From Exhibit B<sup>20</sup> – from the Payson Round-Up, people of Pine (repeat of his business plan that has  
13 worked for him):

- 14 • Provided inadequate investment in development of new water resources in light of the fact that
- 15 other water districts and individuals have found adequate water for years.
- 16 • Failed to provide adequate storage to meet peak demand spikes.
- 17 • Failed to perform adequate due diligence in terms of water development projects.
- 18 • Performed inferior repairs to our water system.
- 19 • Been notified numerous times by the ACC regarding poor customer relations and billing clarity.
- 20 • Burdened the people of Pine with unfair and unnecessary water hauling charges.

21  
22 How many times will the ACC let Mr. Hardcastle neglect a water system for years and then come to the  
23 ACC and ask for emergency hauling and emergency rates? He is an unethical, owner of water  
24 monopolies in Arizona. He does not pay taxes nor vote here. The ratepayers do. Mr. Williamson has  
25 taken up and is following Mr. Hardcastle's business model. He showed this with his math error about  
26 leakage at EVP<sup>21</sup> to hide what witness Mr. Hewlett saw: water being hauled out of EVP. They have  
27 created this "emergency" by hauling water into and out of communities. This isn't the first time the  
28 commission has been made aware of this. But PWC's 2012 Annual Report gives you proof of fraud. Do  
29 something with this information and vote "NO" on the proposed rate increase. Provide rates that are  
30 fair to the ratepayers. Do not support this fraud.

31  
32 Positions of the Parties: Ms Nee:

33 "Ms Nee also argues that the Company's miscellaneous expenses are unreasonable because they have  
34 increased faster than inflation over the past five years."<sup>22</sup>

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<sup>19</sup> SN Intervenor Response To Supplemental Rejoinder Testimony- Phase 2, Document 150946, pg. 2, lines 18-28.

<sup>20</sup> SN Intervenor Response To Supplemental Rejoinder Testimony- Phase 2, Document 150946, Exhibit B, pg. 8.

<sup>21</sup> SN Intervenor Post Hearing Brief, document # 151680, pg. 5, lines 18-30.

<sup>22</sup> Judge Nodes' ROO, pg. 30, lines 6-8.

Exception #4: Payson Water Company expenses are unreasonable.

Mr. Bourassa, the Company's consultant, stated in his testimony:<sup>23</sup>

"Well, if you go back five years and you look at the miscellaneous expense, it increased at a rate of about 2.8% a year, which was about inflation, average inflation over the last five years."

1) The above statement from the ROO minimizes the rate of increase of the Company's Miscellaneous expenses over the period since the last rate increase. In 2001, the Company's Misc. Expenses were \$36,067. In 2012, the Company's Misc. expenses were \$249,525.  $(36,067)(1+r)^{11} = 249,525$ . The Company's Misc. expenses increased at a rate of 19.2% per year. This is a HUGE rate of increase per year compared to inflation. This is outrageous, not just because Misc. expenses have increase faster than inflation for the past 11 years, but because the rate is  $19.2\%/2.8\% = 6.9X$  the rate of inflation. This is NOT reasonable. This is an outrageous increase in overhead expenses. In private industry, managers lose their jobs for not holding costs in line with inflation. I realize this is not private industry, but for goodness sake, the increase of overhead this Company had should be against the law or at least not considered "reasonable by staff." Any person with some business sense knows that something is WAY out of line with the increase in this Company's overhead over the years. It is designed to get them a rate increase that they do not deserve. A 9% return on equity should be granted to companies that can maintain expenses within a reasonable margin plus or minus 1-2% of inflation. If they not getting competitive quotes for the best value of services available, that should not be at the expense of rate payers.

Positions of the Parties: Ms Nee:

"Ms Nee argues that the proposed management Fee is unreasonable because Mr. William[son] manages seven other utilities and does not maintain timesheets to document the time devoted to each utility."<sup>24</sup>

2) I have been inaccurately paraphrased in the above statement. The point I was making is that someone providing a service typically charges for his or her service by billable hour. How does Mr. Williamson can come up with a dollar figure for his PWC management fees when he admitted his Company does not keep track of how much time an individual spends on PWC or any of JW Water Holdings companies for that matter. And how can staff say that these fees are reasonable? Mr. Williamson just started running Payson Water Company, Navajo Water Company and Tonto Basin Water Company on May 31<sup>st</sup>, 2013.

<sup>23</sup> Vol. I, pg. 126, lines 1-12.

<sup>24</sup> Judge Nodes ROO, pg. 30, lines 4-6.

1 In his Testimony, he was asked to explain how costs are allocated for management fees.

2  
3 Mr. Williamson replied, "We have a range of management fees that we charge to different companies  
4 we manage. Those fee range between \$10 and \$17 per customer. In this case, you are looking at the  
5 \$13 per month per customer rate, which is average."<sup>25</sup>

6 This answer is absurd. Jason Williamson is managing JW Water Holdings and Pivotal Utility Management  
7 for a combined eight companies. If they aren't tracking the hours worked for which company, what do  
8 they do, guess how many hours they have worked in a day for what company? They have to be guessing  
9 to come up with a rate of \$10 to \$17 dollars per customer per month. Mr. Williamson can't honestly say  
10 what his Management fees are if he doesn't keep track of hours. I don't know how the Staff has allowed  
11 this questionable, estimation method. The management fees, in PWC's expenses, are not backed up by  
12 any accounting records to say they are fair, reasonable or accurate. It appears to me, that the Company  
13 was working backwards from the 1.2 Debt Service Coverage that they needed and came up with a dollar  
14 number to put in for management fees.

15  
16 Level of Miscellaneous Fee Expense and Rate Case Expense

17 3) The ROO omits the fact that the \$65,000 per year PWC rate case expense is 5X higher than the  
18 \$12,876 average for 46 Arizona private water companies in the sample.<sup>26</sup> The Company with a \$64,998,  
19 2012 rate case expense was Bella Vista WC that had 2012 revenue of \$4,523,515 or 10X times PWC.

20 **Position of the Parties: Company**

21 "The Company argues that the Intervenor's' allegations of a conspiracy between Staff and the Company  
22 "are as outrageous as they are false."<sup>27</sup>

23  
24 Position of Parties: Staff

25 "Staff also disputes the Intervenor's' allegations of misconduct by Staff, ALJ, and the Company in these  
26 proceedings. According to Staff, there is no bias in the record to support allegations that Staff and the  
27 ALJ conspired with the Company against the interests of the customers of the Company. Staff similarly  
28 claims that there is no evidence of bias on the part of Staff or ALJ."<sup>28</sup>

29  
30  

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<sup>25</sup> Vol II, pg. 270, lines 20-25.

<sup>26</sup> SN Intervenor Response PWC Reply Brief, 3/31/14, pg. 3, lines 6-11, & Exhibit A, pg. 8.

<sup>27</sup> Judge Nodes ROO, pg. 20, lines 23-24.

<sup>28</sup> Judge Nodes ROO, pg. 27, lines 6-10.

1 Exception 5) No Arizona Corp Commission Staff and ALJ bias for PWC.

2  
3 PWC's 2011 Annual Report is missing MDC's water use data sheet. Mr. Williamson testified that the  
4 2012 Annual Report was both "incomplete and inaccurate."<sup>29</sup> Mr. Hardcastle had signed an affidavit  
5 that both of the 2011 and 2012 Annual Reports were "both complete and correct." Even though this  
6 was brought to Staff's attention<sup>30</sup>, to my knowledge there have been no repercussions to Mr. Hardcastle  
7 for turning in the PWC's 2011 Annual Report incomplete and their 2012 Annual Report both "incomplete  
8 and incorrect."

9 The missing MDC water use information with no follow up by staff for replacement data indicates bias.  
10 Are the sworn affidavits the ACC requires on the Annual Reports being both "complete and correct"  
11 information not really taken seriously or enforced by the ACC? Isn't this perjury to sign something as  
12 both correct and complete when it was not? Why would ALJ Nodes overlook these facts in evidence? In  
13 addition, the ACC has granted the PWC an extension to turn in their 2013 Annual Report. Why is the  
14 ACC allowing this? This definitely is bias against the Intervenor to not have this information.

15 Further, Mr. Jason Williamson filed his Rejoinder with a subtraction error in it to make his point that  
16 leakage at East Verde Park (EVP) was only 1.6% to make his argument that no water could have been  
17 hauled out of EVP.<sup>31</sup> No one on Staff noticed this subtraction error, nor to my knowledge did ALJ Nodes  
18 think it was perjury to swear to tell the "whole truth and nothing but the truth," yet make a purposeful  
19 error to make an argument.

20 Further, Mr. Jian Liu, Engineer in this case, did not notice that PWC hauled and charged MDC customers  
21 for 4 months in 2012 when the wells pumped more water than was sold.<sup>32</sup> Further proof of fraud, is  
22 that MDC only has 105,000 gallons of water storage. If you look at gallons hauled in versus storage  
23 capacity, there is clear proof that Payson Water Company had to have hauled a lot of water OUT of  
24 MDC.<sup>33</sup> Mr. Liu and Mrs. Crystal Brown wrote their memo on Sept. 18<sup>th</sup> saying that there was a severe  
25 water shortage at MDC. It was their job to notice these discrepancies.

26  
27 Also, as noted in Exception 1, it was stated several times that SN attended the Phase 1 hearing when this  
28 falsifies facts in evidence.

29  
30  
<sup>29</sup> Jason Williamson's Supplemental Rejoinder, January 15th on pg. 6, lines 15-21.


<sup>30</sup> SN Intervenor Post-Hearing Brief, document #151680, pg. 5, lines 9-10.

<sup>31</sup> SN Intervenor Post-Hearing Brief, document #151680, pg. 5, lines 18-30.

<sup>32</sup> SN Intervenor Exceptions to Staff's Recommended Order, document #153506, Exhibit A, pg. 5.

<sup>33</sup> SN Intervenor Exceptions to Staff's Recommended Order, document #153506, pg. 2, lines 2-11, 5/22/14.

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6  
7 Respectfully submitted this 5th day of June, 2014.

8  
9 By   
10 Suzanne Nee  
11 2051 E. Aspen Drive  
12 Tempe, AZ 85282  
13

14 ORIGINAL and thirteen (13) copies  
15 of the foregoing were filed this 5th  
16 day of June, 2014 with:

17  
18 Docket Control  
19 Arizona Corporation Commission  
20 1200 W. Washington Street  
21 Phoenix, AZ 85007  
22

23 COPY of the foregoing was mailed  
24 this 5th day of June, 2014 to:

25  
26 Jay Shapiro (Attorney for Payson Water Co., Inc.)  
27 Fennemore Craig P.C.  
28 2394 E. Camelback Road, Suite 600  
29 Phoenix, AZ 85016  
30

J. Stephen Gehring  
8157 W. Deadeye Rd.  
Payson, AZ 85541

31 Robert Hardcastle  
32 3101 State Road  
33 Bakersfield, CA 93308  
34

Glynn Ross  
405 S. Ponderosa  
Payson, AZ 85541

35 William Sheppard  
36 6250 North Central Avenue  
37 Phoenix, AZ 85012  
38

Kathleen M. Reidhead  
14406 S. Cholla Drive  
Phoenix, AZ 85044

39 Thomas Bremer  
40 6717 E. Turquoise Ave.  
41 Scottsdale, AZ 85253